

Remarks

The Amendments to the Claims

Claims 2, 3, 6, 8, and 12 have been amended to recite “the open reading frame contained within” the nucleotide sequence shown in SEQ ID NO:1. The specification supports this amendment at page 9, lines 1-3: “The amino acid sequence of the receptor is shown in SEQ ID NO:2; a coding sequence for the receptor is shown in SEQ ID NO:1.” Withdrawn claims 13, 15, 27, 33, and 37 have been similarly amended.

The amendments add no new matter to the application.

Compliance with Sequence Listing Requirements

The description of Figure 1 has been amended to comply with sequence listing requirements.

The Rejection of Claims 38 and 39 Under 35 U.S.C. § 112, first paragraph

Claims 38 and 39 stand rejected under 35 U.S.C. § 112, first paragraph, as not enabled. To advance prosecution, claims 38 and 39 have been canceled.

The Rejection of Claims 1-8 and 12 Under 35 U.S.C. § 102(b)

Claims 1-8 and 12 stand rejected under 35 U.S.C. § 102(b) as anticipated by Valenzuela *et al.*, WO 00/11015 (“Valenzuela”). Applicants respectfully traverse the rejection.

Claims 1-8 and 12 recite the amino acid sequence shown in SEQ ID NO:2. Claims 2, 3, 6, and 12 recite the open reading frame contained within the nucleotide sequence shown in SEQ ID NO:1. Valenzuela is cited as teaching amino acid and nucleotide sequences identical to SEQ

ID NOS:2 and 1, respectively. Valenzuela, however, does not anticipate the invention of claims 1-8 and 12.

Valenzuela is not a reference under 35 U.S.C. § 102(b). Section § 102(b) states:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in an printed publication in this or a foreign country or in public use or on sale in this country, **more than one year prior to the date of the application for patent in the United States,**

(emphasis added). Valenzuela has an international filing date of August 29, 1999 (*i.e.*, before November 29, 2000); thus, Valenzuela is not entitled to a 35 U.S.C. § 102(e) date and is a reference only as of its publication date, March 2, 2000. M.P.E.P. § 706.02(f)(1). The present application claims the benefit of provisional application Serial No. 60/216,523 filed July 6, 2000 (less than one year after the March 2, 2000 publication date of Valenzuela). The provisional application discloses both SEQ ID NOS:1 and 2. See SEQ ID NOS:1 and 2 of Serial No. 60/216,523 (Attachment 3) and the enclosed alignments (Attachments 1 and 2; the coding sequence contained within SEQ ID NO:1 is indicated in bold). Thus, Applicants are entitled to the benefit of the July 6, 2000 filing date of the provisional application with respect to each of SEQ ID NO:1 and SEQ ID NO:2. M.P.E.P. § 706.02(D).

Because Valenzuela was published less than a year after Applicants' priority date, Applicants can antedate the disclosure of Valenzuela. *In re Foster*, 343 F.2d 980, 145 U.S.P.Q. (BNA) 166 (C.C.P.A. 1965); M.P.E.P. § 715. See the attached declaration of the inventors under 37 C.F.R. § 1.131. The declaration establishes that, before the March 2, 2000 publication date of Valenzuela, Applicants reduced to practice a polynucleotide comprising the open reading frame

contained within the nucleotide sequence of SEQ ID NO:1; this polynucleotide encodes the amino acid sequence of SEQ ID NO:2. Thus, Valenzuela does not anticipate claims 1-8 and 12.

Applicants respectfully request withdrawal of the rejection.

Respectfully submitted,
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